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PHILIP PULVER and CATALOGS
ONLINE INC., A Washington
Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

**PHILIP PULVER and
CATALOGS ONLINE, INC., a
Washington Corporation,**

Plaintiffs,

vs.

**BATTELLE MEMORIAL
INSTITUTE, a non-profit
corporation, dba PACIFIC)
NORTHWEST LABORATORY)
and/or PACIFIC NORTHWEST)
NATIONAL LABORATORY;
JOHN DOE I through JOHN
DOE XX**

Defendants.

NO. CV-05-5028-RHW

**FIRST AMENDED
COMPLAINT FOR TRADE
SECRET MISAPPROPRIATION,
UNFAIR COMPETITION,
UNFAIR BUSINESS PRACTICES,
BREACH OF FIDUCIARY DUTY,
VIOLATION OF THE
ECONOMIC ESPIONAGE ACT,
INTERFERENCE WITH
BUSINESS EXPECTANCY,
CONSPIRACY,
MISREPRESENTATION,**

JURY TRIAL DEMANDED

PARTIES

1. Plaintiff sets forth its First Amended Complaint. Plaintiff PHILIP PULVER resides in Benton County, State of Washington. Mr. PULVER has

FIRST AMENDED COMPLAINT FOR TRADEMARK
INFRINGEMENT, TRADEMARK DILUTION, UNFAIR
COMPETITION, DAMAGES, PUNITIVE DAMAGES AND
INJUNCTIVE RELIEF

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PNNL\Pleadings\Complaint.IveyAmendmentsFINAL.050628.wpd

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1 provided services to PNNL as Pulver Consulting Services. PHILIP PULVER and
2 Pulver Consulting Services are hereafter identified as PULVER. CATALOGS
3 ONLINE INC., hereafter CATALOGS, is a Washington corporation wholly
4 owned by PHILIP PULVER and doing business in Benton county, State of
5 Washington. Custom Catalogs Online Inc., Mobile Data Methods and CCOL are
6 dba's of CATALOGS ONLINE INC.

7 Defendant Battelle Memorial Institute, hereafter BMI, is a corporation which
8 was incorporated in Ohio, BMI is exempt from federal taxation under Section
9 501(c)(3) of the Internal Revenue Code because it is organized for charitable,
10 scientific and educational purposes, and which has its principal place of business
11 in Columbus, Ohio. All or a substantial part of the events or omissions giving rise
12 to the Plaintiff's claim occurred within Benton County, State of Washington.
13 BMI's business activities within Benton County, State of Washington, includes
14 business conducted by BMI dba Battelle Pacific Northwest Laboratories and or
15 Battelle Pacific Northwest National Laboratories, hereafter PNNL, which business
16 constitutes significant contacts with the Eastern District of Washington.

17 JOHN DOE I through X are persons unknown believed to reside in states
18 other than Washington State. JOHN DOE XI THROUGH XX are persons
19 unknown residing in states unknown to the Plaintiffs.

20 21 **JURISDICTION**

22 2. Damages to Plaintiffs exceed \$75,000.000 excluding interest and costs.
23 Jurisdiction is proper within this District under 28 U.S.C. 1332(a) and Venue is
24 proper within this District under 28 U.S.C. 1391(a) and 1391(c).

25 26 **GENERAL BACKGROUND**

1 2005 the following:

2 PalmFon
3 Battelle No. 13071
4 Patent No. N/A, Protected by Copyright

5 PalmFon is a customizable, corporate white pages system written for the Palm Pilot range
6 of personal digital assistants (PDAs). The system comprises a browsing application that
7 runs on the PDA (for viewing and searching the white pages), and a suite of
8 administration web pages that control the customization of the white pages. These
9 administration web pages are designed to integrate to any relational database and extract
10 employee information such as name, address and phone number from it. This extracted
11 information is then compressed and converted into a form suitable for loading onto the
12 Palm device for use within the browser application. The system is targeted at the full
13 range of Palm OS devices, currently including Palm III, Palm V, Palm VII and
14 Handspring Visor products.

15 Pagemaster: Cameron.Bates@pnl.gov Cameron.Bates_AT_pnl_DOT_gov
16 Date: January 2005

17 6. BMI/PNNL employees and agents, with the representation of the
18 completed development of PalmFon, solicited PULVER/CATALOGS to license,
19 from BMI/PNNL, and commercialize PalmFon. BMI/PNNL employee and
20 representative Mr. Chris Parkinson represented in March 2001 as follows:

21 Invention Report

22 PalmFon - A Corporate White Pages for Palm OS Devices

23 March 7th 2001

24 Chris Parkinson

25 Environmental Molecular Sciences Laboratory,
26 Pacific Northwest National Laboratory, Richland, WA 99352

27 Introduction

28 PalmFon is a customizable, corporate white pages system written for the Palm Pilot range
of personal digital assistants (PDAs). The system comprises a browsing application that
runs on the PDA (for viewing and searching the white pages), and a suite of
administration web pages that control the customization of the white pages. These
administration web pages are designed to integrate to any relational database and extract
employee information such as name, address and phone number from it. This extracted
information is then compressed and converted into a form suitable for loading onto the
Palm device for use within the browser application. The system is targeted at the full
range of Palm OS devices, currently including Palm III, Palm V, Palm VII and
Handspring Visor products.

1
2 7. PULVER/CATALOGS, in reliance on the representations of BMI/PNNL
3 and Mr. Parkinson, negotiated with BMI/PNNL primarily through BMI/PNNL
4 employee and representative Mr. Mark L. Goodwin, commencing in early to mid
5 2001, for a licensing agreement to commercialize PalmFon. On or about January
6 2002, a Licensing Agreement between BMI/PNNL and CATALOGS was
7 executed, a copy of which is annexed hereto as Exhibit 1-PalmFon Licensing
8 Agreement. PalmFon software was delivered to PULVER/CATALOGS in
9 January 2002.

10 Attachment A to the Licensing Agreement lists SOFTWARE licensed under
11 Article 2 including PalmFon Version 1.0(Battelle IPID No. 13071) and bears the
12 statement "These SOFTWARE Products were developed with funding from the
13 United States Government." Article 2 of the Licensing Agreement is entitled "2.
14 LICENSE" and states in part "...B. This Paragraph 2B is applicable only to
15 SOFTWARE produced with Government funding; Attachment A, Column 2 gives
16 the date to be inserted below for each SOFTWARE product where applicable.
17 The license granted pursuant to Paragraph A hereof is subject to any rights the
18 Government of the United States of America may presently have or may assert in
19 the future for any reason..." By contract or statute BMI/PNNL was obligated to
20 make payments to DOE for royalty or licensing revenues realized by BMI/PNNL
21 through the Licensing of PalmFon.

22
23 8. PULVER/CATALOGS were unable to operate the PalmFon software.
24 PULVER/CATALOGS undertook reasonable and diligent communications with
25 BMI/PNNL and its employees and agents in an attempt to operate the PalmFon
26 software. PULVER/CATALOGS contracted for and received independent

1 software consultation in an attempt to operate the PalmFon software. The
2 PalmFon software delivered by BMI/PNNL was not usable outside of PNNL.

3
4 9. BMI/PNNL and its employees and agents including Mr. Parkinson, Mr.
5 Goodwin and unknown JOHN DOES, at the time of solicitation of
6 PULVER/CATALOGS, knew that representations of PalmFon functionality and
7 operability were false and comprised misrepresentations and fraud. In the
8 alternative, BMI/PNNL through its employees and agents including Mr.
9 Parkinson, Mr. Goodwin and unknown JOHN DOES knew, at the time of
10 solicitation, that PalmFon was inoperable; or, in the alternative, BMI/PNNL and
11 its employees and agents including Mr. Parkinson, Mr. Goodwin and unknown
12 JOHN DOES, at the time of solicitation of PULVER/CATALOGS, knew that
13 PalmFon was operable, as represented, and that said BMI/PNNL and its
14 employees or agents, including Mr. Mike Schwenk, prior to delivery of PalmFon
15 software to PULVER/CATALOGS, disabled and rendered inoperable PalmFon
16 software from functioning as represented.

17
18 10. The misrepresentation of the operability and functionality of the
19 PalmFon software or the rendering inoperable of the PalmFon software and the
20 delivery of inoperable PalmFon software to PULVER/CATALOGS damaged
21 PULVER/CATALOGS in an amount which amount will be proven at trial.

22 PULVER/CATALOGS did not know of the misrepresentation and damage
23 until PULVER/CATALOGS approached BMI/PNNL and Mr. Kevin Dorow
24 seeking assistance in advancing the PalmFon software for use with InterSystems,
25 Inc. at which time BMI/PNNL through Mr. Dorow conducted further operability
26 and functionality examinations of PalmFon software and with Mr. Dorow

1 advising of the inoperability and functionality of PalmFon software in March
2 2002 at which time BMI/PNNL and Mr. Dorow commenced receiving payment
3 from DOE-TAP funds previously authorized for PULVER/CATALOGS for the
4 purpose of preparing for a trade show demonstration, scheduled for April 2002,
5 involving new mobile data software to replace the dysfunctional PalmFon
6 software.

7 The misrepresentation of the operability and functionality of the PalmFon
8 software was accomplished by BMI/PNNL, Mr. Parkinson and Mr. Goodwin by
9 wire including internet, telephone and email. The representations by BMI/PNNL,
10 Mr. Parkinson, Mr. Goodwin and others including JOHN DOES I THROUGH
11 XX, constituted material misrepresentations of existing fact; the falsity of which
12 was known to BMI/PNNL, Mr. Parkinson and Mr. Goodwin and JOHN DOES I
13 THROUGH XX, were made with the intent to cause PLAINTIFFS to act with
14 BMI/PNNL, Mr. Parkinson and Mr. Goodwin and JOHN DOES I THROUGH
15 XX, knowing of PLAINTIFFS' ignorance of the falsity of the misrepresentations.
16 PLAINTIFFS' relied on and had the right to rely on the truth of the representation
17 with resulting damage to PLAINTIFFS in amounts to be proven at the time of
18 trial. The misrepresentations and acts of delivery of inoperable and non-
19 functional PalmFon software, for which BMI/PNNL and Mr. Parkinson and other
20 employees and representatives of BMI/PNNL were paid by DOE, denied DOE
21 royalties that would have resulted from commercial sales of the PalmFon software
22 and constituted fraud against DOE.

23
24 11. Mr. Chris Parkinson, BMI/PNNL Employee and the developer of the
25 DOE-funded PalmFon software, represented to PULVER/CATALOGS, in early
26 to mid 2001, that the development was complete and that the completed PalmFon
27

1 software enabled handheld Palm users to extract information from standard
2 databases. Mr. Parkinson submitted an invention report dated March 7, 2001 and
3 entitled "Invention Report - PalmFon - A Corporate White Pages for Palm OS
4 Devices, Chris Parkinson, Environmental Molecular Sciences Laboratory, Pacific
5 Northwest National Laboratory, Richland, WA 99352."

6
7 12. Mr. Parkinson, as BMI/PNNL employee or agent, had worked with
8 PULVER/CATALOGS on commercializing other BMI/PNNL software since
9 1997, approached PULVER/CATALOGS, on behalf of BMI/PNNL, in May 2001
10 soliciting PULVER/CATALOGS to license, market and commercialize the
11 PalmFon software. Mr. Parkinson's support of his solicitation of
12 PULVER/CATALOGS included Mr. Parkinson's construction of a Web Site with
13 a demonstration of the functioning PalmFon. PULVER/CATALOGS, in response
14 to the BMI/PNNL solicitation, commenced market research, pursuing and
15 developing sales channels and taking additional action to comprehensively
16 analyze the action required to commercialize PalmFon. Mr. Parkinson notified
17 Mr. Pulver, by wire via telephone, email and internet, copied to Mr. Mark L.
18 Goodwin, BMI/PNNL representative, on Wednesday, July 18, 2001 8:16 AM as
19 follows:

20 "Subject: External Web Site for PalmFon. The PalmFon external web site /
21 demo web site is now up and running at the following
22 URL:http://sywell.emsl.pnl.gov. This site will be up permanently, and is
23 suitable for advertising with CBD announcements etc...Chris"

24 That Web site included the following text prominently displayed:

25 "PalmFon - Corporate Data, Anytime, Anyplace...PalmFon is an application
26 suite designed to place large amounts of corporate data into the hands of
27

1 users for anytime, anyplace access. PalmFon allows easy access to internal
2 corporate databases from either the Web or from handheld computers such as
3 Palm Pilots and Windows Pocket PC devices. PalmFon ties into ANY
4 standard relational database (i.e., Oracle, Sybase MySQL etc...) and is easily
5 configured to allow just the right information out to users. “
6

7 13. BMI had a 90-day right of first refusal to commercialize PalmFon, or any
8 other DOE-funded technology, which expired by July 2001. This event allowed
9 PULVER/CATALOGS to commence negotiation of a license agreement with
10 BMI/PNNL via BMI/PNNL representative Mr. Goodwin, with an overall terms
11 and agreement formed by July 31, 2001. Mr. Parkinson and BMI/PNNL
12 facilitated, on behalf of the DOE, the filing for copyright registration with the
13 DOE approving the copyright filing of PalmFon software by late July, 2001.
14

15 14. Mr. Parkinson, in September 2001, provided documentation to
16 PULVER/CATALOGS, including but not limited to Commerce Business Daily
17 (CBD) announcements. These documents, including Mr. Parkinson's PalmFon
18 Web site, were very specific, clear and consistent on the critical functionality of
19 PalmFon. The subsequent positive market response realized by
20 PULVER/CATALOGS, confirms that the stated PalmFon functionality had high
21 commercial potential.
22

23 15. Mr. Parkinson, in October 2001, provided detailed information regarding
24 PalmFon to PULVER/CATALOGS resulting in PULVER/CATALOGS placing
25 an announcement in Commerce Business Daily seeking additional distributors,
26 marketers and resellers of the PalmFon software. In response to the
27

1 announcement Tyrone Daniels of Ohio based Onyx expressed high interest in
2 becoming a marketing agent for PalmFon and submitted a proposal to
3 PULVER/CATALOGS in October 2001.

4
5 16. The PalmFon Licensing Agreement, executed between BMI/PNNL and
6 PULVER/CATALOGS, in January 2002, was executed on behalf of BMI/PNNL
7 by its representative, Mr. Mike Schwenk. BMI/PNNL, Mr. Parkinson, and Mr.
8 Goodwin knew, as early as 2001, that the PalmFon software either was inoperable
9 and not functional as represented by BMI/PNNL and its representatives, or that
10 the operable and functional PalmFon software, to be delivered and as delivered to
11 PULVER/CATALOGS had been rendered inoperable and not functional.
12 BMI/PNNL, Mr. Schwenk, Mr. Parkinson, and Mr. Goodwin and other
13 representatives of BMI/PNNL acted in concert and conspired to license the
14 PalmFon software either knowing of its inoperability and non-functionality as
15 represented, and or to render the PalmFon software inoperable and non-functional,
16 prior to and for delivery to PULVER/CATALOGS. BMI/PNNL, Mr. Parkinson,
17 and Mr. Goodwin and other representatives of BMI/PNNL formed, assisted by
18 wire communications including email, internet and telephone, and entered into an
19 agreement to misrepresent PalmFon as operable and functional or to render
20 inoperable and non-functional PalmFon to deprive PLAINTIFFS of their business
21 prospects in the sale of PalmFon with said conspiracy damaging PLAINTIFFS
22 and depriving the DOE of royalties rightfully accruing from the
23 commercialization of PalmFon and depriving Government use of the functioning
24 PalmFon.

25
26 17. Mr. Parkinson, in January 2002, resigned from BMI/PNNL to work for

1 Alien Technology, a BMI/PNNL spin out which develops RFID and other mobile
2 technologies.

3
4 18. PULVER/CATALOGS contacted, in February 2002, PNNL technical
5 staff Carlson and Connell, for assistance in operating the PalmFon software. .

6
7 19. BMI/PNNL representative Mr. Dorow, confirmed in March 2002, that
8 the PalmFon software was not maintainable, fixable, or enhanceable .
9 Inoperability and removal of original functionality was indicated, on or about
10 March 1, 2002, by an independent software consultant who determined that the
11 PalmFon software had been altered from the original software code configuration,
12 described in the Mr. Parkinson invention report and the Mr. Parkinson PalmFon
13 Web Site, by hard coding the PalmFon software to only work with the BMI/PNNL
14 phone directory, thereby making it commercially useless. The conclusions of
15 inoperability and lack of functionality by BMI/PNNL staff and by an independent
16 consultant is contrasted with the functionality that Mr. Parkinson and BMI/PNNL
17 had clearly and consistently represented to PULVER/CATALOGS, the DOE and
18 the public in 2001 via Web site, email, telephone, handwritten diagrams from Mr.
19 Parkinson, copyright-related documents and conferences.

20
21 20. As of March 2005, three years after BMI/PNNL through its staff Mr.
22 Dorow determined PalmFon was unusable outside of BMI/PNNL, BMI/PNNL
23 continues to represent the PalmFon software as available for licensing on its Web
24 site. The removal of this representation from the BMI/PNNL Web site would be
25 an admission to the DOE, PULVER/CATALOGS and the public that the PalmFon
26 software is inoperable.

1 21. The delivery of inoperable PalmFon software to PULVER/CATALOGS,
2 in January 2002, is the first act, relative to PULVER/CATALOGS, by
3 BMI/PNNL and its representatives wherein BMI/PNNL and its representatives
4 assisted one another and cooperated in a scheme or pattern whereby BMI/PNNL
5 submitted billings to the DOE and received DOE funding. PalmFon was licensed
6 to PULVER/CATALOGS, was delivered in a dysfunctional condition such that
7 the product was commercially useless thereby eliminating the prospects of
8 royalties to the DOE and rendering the License Agreement and PalmFon software
9 valueless to PULVER/CATALOGS to the damage of PULVER/CATALOGS in
10 an amount to be proven at the time of trial. This first act comprises conduct of an
11 enterprise through a pattern of activity or a scheme, supported by the use of wire,
12 email, telephone and internet communication, for the purpose of and conspiring to
13 deprive PULVER/CATALOGS of the fruits of the PalmFon software Licensing
14 Agreement.

15
16 22. The events of September 11, 2001, and their aftermath revealed the
17 criticality of mobile communication technologies and demonstrated the
18 commercial need for a product with functionality attributed by BMI/PNNL and its
19 representatives to PalmFon software, i.e., data communication from standard
20 databases to Palm or Pocket PC devices. The PalmFon software product was
21 represented to communicate from a database to a Palm or Pocket PC device. Such
22 attribution was made in a BMI/PNNL invention report dated March 2001 and at a
23 BMI/PNNL PalmFon Web site launched in July 2001.

24
25 **MOBILE DATA MANAGER**

26 PULVER/CATALOGS, in November 2001 acquired the domain name

1 www.mobiledatamanager.com and in January 2002, received an inquiry from
2 InterSystems Inc., the leading worldwide supplier of database products and
3 services to healthcare providers and other markets. PULVER/CATALOGS
4 proposed to develop a completely new product named Mobile Data Manager,
5 hereafter MDM. By March 2002, PULVER/CATALOGS had conceived of and
6 began developing the specification for MDM, a software product designed for
7 Palm and Pocket PC users to receive(download) and send(upload) information to
8 and from standard databases. By March 2002, PULVER/CATALOGS had
9 conducted extensive market research demonstrating the marketing potential for
10 MDM. The PULVER/CATALOGS specification, activities and discussions with
11 MDM current or prospective partners, in and market research comprises valuable
12 Trade Secret information protected by RCW 19.108.020 as information deriving
13 independent economic value from not being generally known to, not being readily
14 ascertainable by proper means by other persons, including BMI/PNNL and its
15 representatives, who can obtain economic value from its disclosure or use. The
16 indicated MDM specification and MDM marketing/sales information and analysis
17 was disclosed to BMI/PNNL including Mr. Dorow and Mr. Goodwin in
18 performance of the BMI/PNNL technical assistance pursuant to the DOE-TAP
19 agreements.

20 PULVER/CATALOGS, prior to March 2002, had qualified for DOE-TAP
21 funding and had DOE-TAP funding available to obtain technical assistance from
22 BMI/PNNL. PULVER/CATALOGS approached BMI/PNNL representative Mr.
23 Dorow, and disclosed to Mr. Dorow the initial specification of the new MDM
24 product and disclosed the marketing research including specific discussions and
25 plans, regarding MDM, with InterSystems; Mr. Dorow and BMI/PNNL agreed to
26 provide technical assistance to PULVER/CATALOGS in return for payment from
27

1 the DOE-TAP funds available to PULVER/CATALOGS. After numerous
 2 consultations with PULVER/CATALOGS in March and April 2002, Mr. Dorow
 3 developed a prototype MDM version that had functionality sufficient for
 4 PULVER/CATALOGS to demonstrate the MDM prototype at an InterSystems
 5 booth at a Salt Lake City trade show in April 2002.

6
 7 23. The PULVER/CATALOGS first draft of the new specification was
 8 communicated to BMI/PNNL and Mr. Dorow by at least March 2002 with initial
 9 funding for BMI/PNNL and Mr. Dorow provided by the preexisting DOE-TAP
 10 agreements. Thereafter PULVER/CATALOGS qualified for additional DOE-
 11 TAP agreements for the specific purpose of providing funding for payment of
 12 BMI/PNNL and its representatives, including Mr. Dorow, for technical assistance
 13 for the development of the MDM product for PULVER/CATALOGS.

14 Thereafter PULVER/CATALOGS provided numerous revisions of the new
 15 specification and detailed marketing analysis and sales opportunities and
 16 conferred in personal conferences and teleconferences numerous times with
 17 BMI/PNNL and its representatives, including Mr. Dorow, with BMI/PNNL and
 18 Mr. Dorow agreeing to assist while being paid by the DOE-TAP fund program, in
 19 developing the MOBILE DATA MANAGER product for PULVER/CATALOGS.

20 BMI/PNNL assistance pursuant to payments from the DOE-TAP agreements
 21 for the benefit of PULVER/CATALOGS, are described at a Pacific Northwest
 22 National Laboratory Web site, as of February 20, 2005, stating in part:

23
 24 Release date: September 3, 1996

25 Contact: Media & External Communications, (509) 375-3776

26 **Free technical assistance offered to businesses**

1 RICHLAND, WA -- Local businesses...can draw on the expertise of federal
2 laboratories, at no charge, through a new Department of Energy-funded
3 technical assistance program.

4 Under the new Technical Assistance Program...businesses can receive
5 assistance from the Pacific Northwest National Laboratory....

6 The program is managed by Pacific Northwest.... DOE has designated
7 \$300,000 of its economic transition funding for TAP.

8 "Firms that are not necessarily technology-based but that could benefit from
9 technological support can receive assistance free-of-charge through TAP,"
10 explains TAP Manager Gary Spanner, Pacific Northwest. "Assistance may
11 include materials characterization, new product development, scientific peer
12 review of a concept, advice on environmental technologies, chemical process
13 improvements and factory modernization, just to name a few."

14 "Pacific Northwest is a unique asset in this region and an important tool that
15 local businesses now can take advantage of through TAP," says Dave
16 Dillman, TRIDEC. "Using its marketing resources and industrial contacts,
17 TRIDEC will serve as a liaison for TAP to team businesses with the
18 resources of Pacific Northwest...."

19 Webmaster: webmaster@pnl.gov

20 Reviewed: April 2001

21
22
23 24. PULVER/CATALOGS continued to receive MDM product development
24 assistance from BMI/PNNL and its representatives, including Mr. Dorow, with
25 the understanding that the DOE-TAP funded assistance was for the purpose of
26 producing a product for PULVER/CATALOGS per the MDM specifications
27 delivered to BMI/PNNL by PULVER/CATALOGS for the commercialization of

1 the product to customers or through marketing partners and or resellers identified
2 by PULVER/CATALOGS in its extensive marketing activities and analysis.
3 MDM product specifications were evolved by PULVER/CATALOGS and
4 marketing analysis matured through the research and product specification
5 development of PULVER/CATALOGS many times prior to June 12, 2002.

6
7 25. By June 13, 2002 Mr. Dorow produced a “PNNL Investment Proposal”,
8 noted as Version 02.1.0, stating in part

9 “...the proposed ...investment will deliver the ...[MDM]...software
10 architecture at a commercially viable level of maturity (i.e., shrink-wrapped
11 software).. ...Building on an already established functional prototype, the
12 investment will be used.....The investment will result in a marketable
13 product with high-return potential.....The MDM software currently exists in
14 an advance prototype state.....Once these tasks are completed the resulting
15 product will be unique in the market, providing dynamic generation of data
16 view / edit interfaces on handheld devices for any existing databases with no
17 programming required. ...Since MDM is already in a functional state, the
18 risks associated with technology are small (the concept has already been
19 proven)...Time-to-market is a potential risk—At this time no other product on
20 the market provides the functionality the MDM does...The business risks
21 associated with MDM are small...One of the Labs strategic objectives is:
22 “Deployment of Highly Beneficial Technologies”. MDM would be highly
23 beneficial in that it could have major impacts to mission accomplishment,
24 society, and the economy by: Being broadly available for, and delivering
25 high value to, DOE and other governmental missions. Providing substantial
26 social and economic benefits to the region and the nation. MDM would also

1 be beneficial in that it would provide substantial returns from
 2 commercialization. These returns are invested in the refreshment of
 3 Laboratory staff and infrastructure and in Battelle to support future strategic
 4 growth....Commercialization is the major reason for producing MDM, which
 5 falls in line with one of the Lab's goals to move its technologies out of the
 6 laboratory and into commercial applications where they can solve critical
 7 problems for industry and society. By producing and commercializing
 8 MDM will be achieving the following goals set fourth by the Technology
 9 Commercialization department in the Lab:---...Financial returns to PNNL
 10 provide reinvestment in facilities, equipment, people, and
 11 technology....PNNL-developed intellectual property fuels Battelle's
 12 commercialization program....Demand for this technology is worldwide as
 13 evidenced by the inquiries and interest so far. A few examples of this
 14 interest and associated market sizes are given below:—InterSystems
 15 Inc....has expressed interest in packaging MDM as an add-on product to their
 16 Medical Database System, used by most of the top hospitals, labs, and
 17 healthcare application providers in the world...the potential sales could occur
 18 at 3500 locations....the potential total revenue would be \$1,750,000.
 19 InterSystems underlying database technology, Cache, is also used in the
 20 financial services...offering other potential applications of the MDM
 21 technology. The states of Texas, Ohio, and Washington have expressed
 22 interest in using MDM...[with]...potential revenue ...\$1,125,000. Several
 23 public utility districts have expressed interest in using
 24 MDM...[with]...potential revenue could exceed \$1,000,000....The total of the
 25 potential revenues for these three applications yields an ROI of about 5100
 26 (and this is for specific examples in three market areas—interest for use of
 27

1 MDM has also been expressed in several others).

2
3 The specific MDM marketing opportunities and corresponding revenue
4 projections were developed by PULVER/CATALOGS through extensive trade
5 secret market research, market analysis and establishment of business
6 relationships and other trade secrets.

7
8 26. Mr. Dorow's June 13, 2002 "PNNL Investment Proposal", noted as
9 Version 02.1.0" BMI/PNNL claimed to be the only owner of MDM with no
10 recognition of the fact of the ownership of underlying trade secrets and other
11 proprietary information underlying MDM by PULVER/CATALOGS with
12 DOE/BMI/PNNL receiving rights limited to those obtained by DOE from the
13 DOE-TAP funding paid to BMI/PNNL. The June 13, 2002 "PNNL Investment
14 Proposal" was to move the MDM project away from DOE-TAP funding to the
15 private corporate funding of BMI/PNNL under the BMI/PNNL IR&D funding or
16 other funding sources. The "PNNL Investment Proposal" proposal stated in part:

17 Battelle is the sole owner of the IP associated with MDM. This project will
18 enhance the value of that IP.

19
20 27. On or about July 8, 2002, Mr. Dorow presented a proposal for
21 BMI/PNNL funding of the MDM project by a document entitled "...FY03 PNNL
22 IR&D Pre-Proposal Format" identified as "Investment Title: Mobile Data
23 Manager" and directed to "Investment Manager" and "Level 1 Steward Mike
24 Lawrence". PNNL IR&D (Internal Research and Development), 1831, is funding
25 from BMI/PNNL for the private corporate interests of BMI/PNNL which is
26 separate from DOE-TAP funding which is government funding for the benefit of

1 DOE and the intended DOE-TAP recipient(s) that DOE encourages to participate.

2 The proposal states in part:

3 “...The Mobile Data Manager (MDM) is a software system...that provides
4 database access and updates via hand held devices....a description of the
5 MDM software is available on the <http://www.pnnl-software.com> web site
6 (select Mobile Data Manager). The proposed project will advance the
7 existing MDM functional prototype to a commercially viable level of
8 maturity (i.e., shrink-wrapped software)....the current MDM advanced
9 demonstration prototype was developed under funding from the Laboratory’s
10 Technical Assistance Program. Several private companies have shown an
11 interest in the product, including InterSystems (leader in Healthcare records
12 database systems), Palm–Federal division...Philip Pulver of Custom Catalogs
13 Online is a licensed distributor of MDM and has been actively marketing the
14 product (at no cost to Battelle) in several business areas including health
15 care, law enforcement, and electronic catalogs....The MDM demonstration
16 prototype was developed to enable DOE staff and contractors to deploy data
17 and databases to field operations. ...The major benefit of MDM is its
18 flexibility for extracting data for immediate mobile use without the mobile
19 data deployment. MDM is being designed to also meet requirements of the
20 private sector.

21
22 28. PULVER/CATALOGS, on August 8, 2002, provided additional
23 marketing information to BMI/PNNL pursuant to the request of BMI/PNNL
24 employee and representative Mr. Goodwin. PULVER/CATALOGS delivered a
25 spreadsheet projecting sales through InterSystems Inc to the private sector at
26 \$7,921,875.00. A separate itemization of clients by categories identified 18

1 categories of customers. On August 14, 2002 Mr. Goodwin interrogated Mr.
2 Pulver re: the PULVER/CATALOGS commercialization plans for MDM. On or
3 about August 14, 2002, Mr. Goodwin used the PULVER/CATALOGS MDM
4 specification to draft a specification for BMI/PNNL.

5
6 29. On or about September 6, 2002, Mr. Pulver asked BMI/PNNL employee
7 Mr. Thomas F. Coonelly for an example or template for BMI IR&D proposals.
8 Mr. Coonelly sent an email to PULVER/CATALOGS entitled

9 “Tech details on PDAC – The strategy for creating PDAC at commercially
10 viable level of maturity includes the following key tasks:”

11 The Coonelly email demonstrates the BMI/PNNL plagiarism or copying of
12 the MDM specification, which was provided by PULVER/CATALOGS to
13 BMI/PNNL and Mr. Dorow and known to Mr. Goodwin and Mr. Robert R. Silva,
14 commencing as early as March 2002 with revisions provided to Mr. Dorow
15 through July 2002, for the BMI/PNNL product PDAC. The BMI/PNNL
16 plagiarism of the MDM specification is misappropriation of the MDM
17 specification for the interests of BMI/PNNL.

18
19 30. BMI/PNNL representative Bill Farris, head of the IR&D committee, told
20 PULVER/CATALOGS on September 6, 2002, that although the new MDM
21 software already developed resulted from PULVER/CATALOGS’ specification,
22 that BMI/PNNL had intentions of taking MDM for BMI/PNNL purposes
23 independent of PULVER/CATALOGS.

24
25 31. A PULVER/CATALOGS marketing partner, David Dillman, was
26 advised, on or about September 16, 2002, by BMI/PNNL representative Mr. Mike

1 Schwenk that Mr. Goodwin and Mr. Silva were working on the BMI/PNNL
2 mobile data software. PULVER/CATALOGS gave detailed verbal [via
3 telephone] and email notice to Mr. Schwenk of the plagiarism and that Mr.
4 Goodwin and Mr. Silva were directly using the MDM specification for the
5 BMI/PNNL software. Mr. Schwenk did verbally admit, via wire by telephone, the
6 plagiarism but did not respond to Mr. Pulver's email notice.

7
8 32. On or about September 24, 2002, Mr. Dorow admitted to
9 PULVER/CATALOGS that Mr. Goodwin and Mr. Silva had plagiarized the
10 MDM specification. On or about October 31, 2002, Mr. Pulver confronted Mr.
11 Goodwin regarding 1. the MDM plagiarism, just after Mr. Goodwin interrogated
12 Mr. Pulver on commercialization plans for MDM, and 2. regarding Mr.
13 Goodwin's acts of interference, abuses, and endless delay of advancing the MDM
14 product which BMI/PNNL was developing for PULVER/CATALOGS and was
15 being paid for by DOE-TAP funds. These additional acts damaged
16 PULVER/CATALOGS by the inability to timely introduce MDM as a commercial
17 product.

18
19 33. On or about December 2, 2002, PULVER/CATALOGS met with Mr.
20 Heister, an employee of BMI/PNNL, and other BMI/PNNL employees including
21 Mr. Dorow. Mr. Heister stated that BMI/PNNL would develop a version of
22 mobile data software; at that meeting Mr. Dorow successfully demonstrated the
23 working MDM software to PULVER/CATALOGS; Mr. Dorow then provided a
24 document that verified that MDM had functionality prior to December 5, 2002.
25 Mr. Dorow also stated that PalmFon was no longer being used at BMI/PNNL.

1 34. On or about April 22, 2003, Mr. Dorow admitted to
 2 PULVER/CATALOGS that BMI/PNNL was demonstrating the functioning MDM
 3 software to prospective clients of BMI/PNNL. Mr. Dorow advised that
 4 prospective client contact information was withheld from PULVER/CATALOGS
 5 at the directive of Mr. Goodwin and that BMI/PNNL was considering forming a
 6 technical support center for MDM to service BMI/PNNL clients.

7 In a June 30, 2003 phone call with PULVER/CATALOGS, Mr. Dorow
 8 stated that Mr. Dorow and Mr. Goodwin were submitting a 2003 IR&D pre-
 9 proposal to develop a derivative, enhanced MDM version that would compete
 10 with and undercut PULVER/CATALOGS. Mr. William Farris, chairman of the
 11 BMI/PNNL IR&D Committee during the 2002 PDAC misappropriation in an
 12 IR&D proposal, had allowed the new 2003 Mr. Dorow/Mr. Goodwin MDM
 13 proposal to be sent to the committee.

14
 15 35. In October, 2003, PULVER/CATALOGS reported the BMI/PNNL
 16 misrepresentations and conspiracy to the DOE- OIG regarding MDM. In
 17 February 2005, PULVER/CATALOGS reported the BMI/PNNL
 18 misrepresentations, conspiracy and sabotage to the DOE - OIG regarding
 19 PalmFon. Together, both PULVER/CATALOGS contacts with the DOE-OIG
 20 reported the fraud of BMI/PNNL in invoicing and receiving payment from DOE
 21 for PalmFon and MDM while misappropriating, misrepresenting and conspiring to
 22 deprive PULVER/CATALOGS from the financial benefits of Licensing
 23 agreements for PalmFon and MDM and to deprive DOE of royalties relative to
 24 PalmFon and MDM and the use by the Government itself.

25
 26 **35A. SUMMARY: THE BMI/PNNL STRATEGY OF TAKING MDM**

1 **FROM PULVER/CATALOGS OF DEPRIVING PULVER/CATALOGS OF**
2 **RESOURCES WITH WHICH TO RESIST:** BMI/PNNL and its representatives
3 and employees advertised to the public that **FREE** technical assistance was
4 available to businesses from BMI/PNNL where BMI/PNNL would be paid by
5 DOE-TAP funds. BMI/PNNL stated in part the following –

6 Release date: September 3, 1996

7 Contact: Media & External Communications, (509) 375-3776

8 **Free technical assistance offered to businesses**

9 RICHLAND, WA -- Local businesses...can draw on the expertise of
10 federal laboratories, at no charge, through a new Department of
11 Energy-funded technical assistance program.

12 Under the new Technical Assistance Program...businesses can receive
13 assistance from the Pacific Northwest National Laboratory....

14 The program is managed by Pacific Northwest....

15
16 When PULVER/CATALOGS approached BMI/PNNL and Mr. Dorow in
17 March, 2002, PULVER/CATALOGS had in place a DOE-TAP agreement with
18 funding available but with the DOE-TAP agreement directed for other projects..
19 BMI/PNNL and Mr. Dorow received MDM specification and marketing
20 information from PULVER/CATALOGS, commencing in March, 2002 ostensibly
21 for the purpose of providing the “**Free technical assistance offered to**
22 **businesses**” and BMI/PNNL and Mr. Dorow received payment from the
23 preexisting DOE-TAP agreement.

24 On April 1, 2002, PULVER/CATALOGS submitted a new DOE-TAP
25 application stating the request for technical assistance as follows:

26 Enhance PNNL PalmFon Software that was licensed to CCOL. This
27

1 includes enabling the software PDA users to change database on
2 handheld devices. JAVA skills are needed (J2ME). PALM o/s
3 JDBC. Request: Kevin Mr. Dorow-line manager Tom Coonlley OK.
4 Kevin has already made some fixes to PalmFon. NEEDED FOR
5 APRIL DEMO.

6
7 What are your expectations regarding the outcome of assistance from the
8 federal government?

9 Working demo for STC conference on April 29th 2002 in Salt Lake
10 City.

11
12 To the best of my knowledge, the assistance requested of the federal
13 government is not reasonably available in the private sector.

14
15 On April 8, 2002, Dr. Gary F. Spanner, Manager, Office of Small Business
16 Programs, Battelle Memorial Institute Pacific Northwest National Laboratory
17 Office of Small Business Programs, authorized the April 1, 2002 DOE-TAP
18 application by PULVER/CATALOGS. This authorization provided additional
19 DOE-TAP funds for payment to BMI/PNNL, Mr. Dorow and other
20 representatives and employees of BMI/PNNL for their assistance to the
21 PULVER/CATALOGS MDM product development..

22
23 On June 5, 2002, Mr. Silva, an employee of BMI/PNNL, called one of
24 PULVER/CATALOGS MDM marketing partners and disparaged the MDM
25 project and upset the partner and potential investor. Subsequently,
26 PULVER/CATALOGS warned BMI/PNNL to cease with this inference and

1 expressed concern about BMI/PNNL violating confidentiality of
2 PULVER/CATALOGS MDM sales/marketing information.

3
4 By June 13, 2002 Mr. Dorow produced a "PNNL Investment Proposal"
5 stating in part "...MDM would also be beneficial in that it would provide
6 substantial returns from commercialization. These returns are invested in the
7 refreshment of Laboratory staff and infrastructure and in Battelle to support future
8 strategic growth....Commercialization is the major reason for producing MDM,
9 which falls in line with one of the Lab's goals to move its technologies out of the
10 laboratory and into commercial applications where they can solve critical
11 problems for industry and society. By producing and commercializing MDM will
12 be achieving the following goals set fourth by the Technology Commercialization
13 department in the Lab:---...Financial returns to PNNL provide reinvestment in
14 facilities, equipment, people, and technology....PNNL-developed intellectual
15 property fuels Battelle's commercialization program....Demand for this
16 technology is worldwide as evidenced by the inquiries and interest so far..."

17
18 In August 2002: Mr. Goodwin admitted that the BMI/PNNL product
19 development, in parallel with the BMI/PNNL DOE-TAP funded assistance to
20 PULVER/CATALOGS for MDM software, would directly compete with the
21 BMI/PNNL strategy of its business development of DOE-Environmental
22 Management Advantage software and other homeland security technologies.

23
24 In an August 29, 2002 meeting with PULVER/CATALOGS, Mr. Goodwin,
25 directed by Ms. Cheryl Cejka, an employee of BMI/PNNL, demanded that
26 PULVER/CATALOGS and the MDM partners submit letters of intent for

1 BATTELLE private [1831] consulting business as a condition for BMI/PNNL
2 allowing the Federally-funded DOE-TAP MDM project to resume even though
3 DOE had previously approved the MDM funding. PULVER/CATALOGS
4 advised BMI/PNNL that such action would constitute a quid-pro-quo and thus
5 violate kickback laws of the Federal Acquisition Regulations.

6
7 On September 16, 2002, Mr. Schwenk, admitted to Mr. Dillman, a
8 PULVER/CATALOGS MDM marketing partner, that Mr. Goodwin and Mr. Silva
9 work were working on their BMI/PNNL equivalent mobile software. In an
10 immediate phone call, PULVER/CATALOGS confronted Mr. Schwenk who
11 confirmed Mr. Dillman's allegations. In a September 24, 2002 phone call with
12 PULVER/CATALOGS, Mr. Dorow openly admitted that Mr. Goodwin and Mr.
13 Silva had plagiarized PULVER/CATALOGS specification and other work on
14 MDM in the BATTELLE IR&D proposal for the BMI/PNNL competitive mobile
15 software named PDAC.

16
17 Throughout August to October 2002, Mr. Goodwin demanded legally and
18 factually unworkable licensing conditions to derail and disrupt the MDM project;
19 Mr. Goodwin harassed PULVER/CATALOGS MDM marketing partners and also
20 disparaged PULVER/CATALOGS and the MDM project. The MDM partners
21 responded by contacting Mr. Schwenk and requested that Mr. Goodwin cease
22 tactics that were undermining the MDM project and endangering MDM business
23 opportunities.

24
25 In a December 2002 meeting with PULVER/CATALOGS, Mr. Heister, an
26 employee of PNNL/BATTELLE, stated that BMI/PNNL would be developing

1 their own version of mobile data software. In that same meeting, Mr. Dorow
2 successfully demonstrated the working MDM software to PULVER/CATALOGS;
3 Mr. Dorow then provided a document that verified that MDM had functionality
4 prior to this demonstration. Mr. Dorow also stated that PalmFon was no longer
5 being used internally at BMI/PNNL.

6
7 In April 2003, Mr. Dorow admitted to PULVER/CATALOGS that
8 BMI/PNNL was demonstrating the functioning MDM software to prospective
9 clients of BMI/PNNL. Mr. Dorow withheld the contact information from
10 PULVER/CATALOGS at the direction of Mr. Goodwin. Mr. Dorow also stated
11 that BMI/PNNL was strongly considering building a technical support center for
12 MDM to service Battelle clients.

13
14 In a June 30, 2003 phone call with PULVER/CATALOGS, Mr. Dorow
15 stated that he and Mr. Goodwin were submitting a 2003 BMI/PNNL IR&D pre-
16 proposal to develop a derivative, enhanced work of MDM version that would
17 compete with and undercut PULVER/CATALOGS. Mr. William Farris, chairman
18 of the BATTELLE IR&D Committee at the time of the copying of the MDM
19 specification for BMI/PNNL use with PDAC, in 2002, allowed the new 2003 Mr.
20 Dorow/Mr. Goodwin MDM proposal to be sent to the committee.

21
22 On July 25, 2003, Mr. Bruce Harrer, an employee of BMI/PNNL,
23 confirmed that the pre-proposal for MDM enhancements, submitted by Mr.
24 Dorow and Mr. Goodwin, was approved for the final round of proposals for
25 investment consideration by the IR&D committee. Mr. Harrer admitted that such
26
27

1 investment would violate the MDM license agreement between BMI/PNNL and
2 PULVER/CATALOGS.

3
4 On August 29, 2003, Mr. Dorow delivered MDM software source code to
5 PULVER/CATALOGS.

6
7 In a September 10, 2003 phone call, Mr. Dorow admitted to
8 PULVER/CATALOGS that the MDM code delivered to PULVER/CATALOGS
9 on August 29, was embarrassing and did not function. Mr. Dorow then stated that
10 PULVER/CATALOGS would receive a working version of the MDM software
11 only on the condition that PULVER/CATALOGS and the MDM partners pay
12 private consulting fees to BMI/PNNL. Mr. Dorow also offered to demonstrate the
13 working MDM version to PULVER/CATALOGS if Mr. Goodwin and other
14 employees of BMI/PNNL were convinced that such demonstration would result in
15 BMI/PNNL private consulting revenue

16
17 In September 2003 PULVER/CATALOGS initiated contact with the United
18 States Department of Energy, Office of Inspector General, hereafter DOE-OIG,
19 and in October 2003 PULVER/CATALOGS submitted details of the DOE-TAP
20 assistance from BMI/PNNL and details of the BMI/PNNL parallel preparation of
21 a mobile product intended to be competitive with the PULVER/CATALOGS
22 Mobile Data Manager (MDM). Throughout this time PULVER/CATALOGS had
23 continued to provide computer software and web site contract services to
24 BMI/PNNL.

1 In a March 26, 2004 email, Mr. Sandusky, an employee of BMI/PNNL,
2 admitted that BMI/PNNL was suddenly preventing PULVER/CATALOGS from
3 providing sub-contracting services to BMI/PNNL.

4
5 On April 2, 2004, Mr. Sandusky, an employee of BMI/PNNL in an email
6 and a phone call to PULVER/CATALOGS, acknowledged that BMI/PNNL was
7 selectively intercepting and blocking incoming emails from
8 PULVER/CATALOGS, and admitted that blocking or filtering such
9 communication to BMI/PNNL harmed PULVER/CATALOGS contracting
10 business.

11
12 In a June 11, 2004 phone call to PULVER/CATALOGS, Ms. Whelan, an
13 employee of BMI/PNNL, ordered that Mr. Philip Pulver no longer contact lab
14 staff for sub-contracting services as he had done since 1995. Ms. Whelan refused
15 to issue anymore work orders on PULVER/CATALOGS subcontract despite
16 requests from BMI/PNNL staff. Mr. Sandusky, BMI/PNNL employee, told
17 PULVER/CATALOGS that senior management at BMI/PNNL had intervened in
18 his contract. It is understood that Mr. George Romano, on behalf of BMI/PNNL,
19 was the representative responding to the PULVER/CATALOGS complaint to the
20 DOE-OIG.

21
22 In February 2005 PULVER/CATALOGS reported the BMI/PNNL, via
23 JOHN DOES I THROUGH XX, sabotage of the PalmFon software
24 demonstrating a pattern and practice of BMI/PNNL and its representatives in
25 having operable and functional PalmFon software but delivering non-functional
26 and non-operable PalmFon software, in January 2002, compared with having

1 operable and functional MDM software but delivering non-functional and non-
2 operable MDM software in August 2003.

3
4
5 **FIRST CAUSE OF ACTION - MISREPRESENTATION - PALMFON**

6 36. Plaintiffs re-allege paragraphs 1 through 35A.

7
8 37. Misrepresentation of the operability and functionality of the PalmFon
9 software was accomplished by BMI/PNNL, Mr. Parkinson and Mr. Goodwin by
10 solicitations to PULVER/CATALOGS to commercialize PalmFon via
11 conferences, telephone calls, wire including internet, telephone and email
12 comprising misrepresentation and wire fraud pursuant to 18 U.S.C.A. § 1343.
13 The misrepresentations of BMI/PNNL, Mr. Parkinson and Mr. Goodwin were
14 made with the intent to cause PLAINTIFFS to act to develop business and
15 marketing plans, form business relations for the purpose of advancing the
16 PalmFon software into the market and to cause PULVER/CATALOGS to be
17 delayed into entering the market for products such as PalmFon software so that
18 BMI/PNNL, Mr. Parkinson, Mr. Dorow, Mr. Goodwin and other BMI/PNNL
19 representatives could advance a similar product into commercialization for the
20 benefit or the conspiring parties.

21 The misrepresentation and delivery of inoperable and non-functional
22 PalmFon software, the preparation of which BMI/PNNL and Mr. Parkinson were
23 paid by DOE, denied DOE royalties and damaged PULVER/CATALOGS in
24 amounts to be proven at the time of trial. The PalmFon software was produced by
25 BMI/PNNL and Mr. Parkinson and others through funding from DOE.

26 In the alternative, the PalmFon software was operable and functional as

1 represented by BMI/PNNL, Mr. Parkinson and Mr. Goodwin, but was rendered,
2 BMI/PNNL, Mr. Parkinson, Mr. Goodwin and other unknown JOHN DOES I
3 through XX, inoperable and or dysfunctional prior to delivery of the PalmFon
4 software source code to PULVER/CATALOGS in January 2002 which,
5 misrepresented by BMI/PNNL, Mr. Parkinson and Mr. Goodwin, as operational
6 and functional at which time the PalmFon software Licensing Agreement was
7 executed.

8 The misrepresentation of the PalmFon software as operational and
9 functional or the rendering inoperable and dysfunctional of the PalmFon software
10 for delivery to PULVER/CATALOGS for the licensing of PalmFon software, was
11 a part of a pattern of activity or a scheme and were accomplished via conferences,
12 telephone calls, wire including internet, telephone and email comprising
13 misrepresentation and wire fraud pursuant to 18 U.S.C.A. § 1343.

14 BMI/PNNL and Mr. Goodwin and other unknown BMI/PNNL
15 representatives identified as JOHN DOES I through XX, intentionally prolonged
16 and extended negotiations with PULVER/CATALOGS, for the licensing of
17 PalmFon software, commencing on or about July 2001 through January 2002.
18 The negotiations and intentional prolonging of the negotiations, for the licensing
19 of PalmFon software, was a part of a pattern of activity or a scheme and were
20 accomplished via conferences, telephone calls, wire including internet, telephone
21 and email comprising misrepresentation and wire fraud pursuant to 18 U.S.C.A. §
22 1343. A Licensing Agreement of PalmFon software to PULVER/CATALOGS
23 was executed on behalf of BMI/PNNL by Mr. Schwenk as Contracting Officer.

24 The misrepresentation of PalmFon software as operational and functional,
25 or of rendering inoperable and dysfunctional PalmFon software and the intentional
26 prolonging of negotiations was a scheme having the intent to delay or prevent
27

1 PULVER/CATALOGS from entering the market with PalmFon software or a
2 product having PalmFon software attributes while allowing BMI/PNNL, Mr.
3 Parkinson and Mr. Goodwin, and other unknown JOHN DOES I through XX to
4 advance PalmFon software or a different BMI/PNNL mobile product into the
5 market. BMI/PNNL, Mr. Parkinson and Mr. Goodwin, and unknown JOHN
6 DOES I through XX conspired in creating and knew of the misrepresentations, the
7 disabling, and the scheme and plan to prevent PULVER/CATALOGS from
8 engaging in the market for a product having PalmFon software attributes.

9 PULVER/CATALOGS did not know of the misrepresentation and damages
10 relative to PalmFon software until March 2002 when PULVER/CATALOGS
11 approached BMI/PNNL and Mr. Dorow seeking assistance in operating and
12 advancing the PalmFon software for use with InterSystems, Inc. at which time
13 BMI/PNNL through Mr. Dorow conducted further operability and functionality
14 examinations of PalmFon software and with Mr. Dorow advising of the
15 inoperability and functionality of PalmFon software in March 2002 at which time
16 BMI/PNNL and Mr. Dorow commenced receiving payment from pre-existing
17 DOE-TAP funds authorized for PULVER/CATALOGS, for the purpose of
18 preparing for a trade show demonstration, scheduled for April 2002, involving
19 new mobile data software to replace the dysfunctional PalmFon software.
20 Thereafter BMI/PNNL, Mr. Dorow and other unknown BMI/PNNL
21 representatives received payment from DOE-TAP funds specifically designated
22 for use to enhance PNNL PalmFon software to change databases on handheld
23 devices.

24 These matters were reported to the DOE-OIG in February 2005.

25
26 **SECOND CAUSE OF ACTION - CONSPIRACY - PALMFON**

1
2 38. Plaintiffs re-allege paragraphs 1 through 37.

3
4 39. Concerted acts and acts of combination to misrepresent the operability
5 and functionality of the PalmFon software was accomplished by BMI/PNNL, Mr.
6 Parkinson and Mr. Goodwin by solicitations to PULVER/CATALOGS to
7 commercialize PalmFon via conferences, telephone calls, wire including internet,
8 telephone and email comprising misrepresentation and wire fraud pursuant to 18
9 U.S.C.A. § 1343. The acts of conspiracy of BMI/PNNL, Mr. Parkinson and Mr.
10 Goodwin were made with the intent to cause PLAINTIFFS to act to develop
11 business and marketing plans, form business relations for the purpose of
12 advancing the PalmFon software into the market and to cause
13 PULVER/CATALOGS to be delayed into entering the market for products such
14 as PalmFon software so that BMI/PNNL, Mr. Parkinson, Mr. Goodwin and other
15 BMI/PNNL representatives could advance a similar product into
16 commercialization for the benefit or the conspiring parties.

17 The acts of conspiracy in misrepresentation and of delivery of inoperable
18 and non-functional PalmFon software, the preparation of which BMI/PNNL and
19 Mr. Parkinson were paid by DOE, denied DOE royalties and damaged
20 PULVER/CATALOGS in amounts to be proven at the time of trial. The PalmFon
21 software was produced by BMI/PNNL and Mr. Parkinson and others through
22 funding from DOE. The conspiracy to delay or deny PULVER/CATALOGS
23 entry into the market place was additionally a conspiracy to deny DOE royalties or
24 other licensing fees from the licensing of the PalmFon software.

25 In the alternative, the PalmFon software was operable and functional as
26 represented by BMI/PNNL, Mr. Parkinson and Mr. Goodwin, but was rendered,

1 by the concerted and conspiring acts of BMI/PNNL, Mr. Parkinson, Mr. Goodwin
2 and other unknown JOHN DOES I through XX, inoperable and or dysfunctional
3 prior to delivery of the PalmFon software source code to PULVER/CATALOGS
4 in January 2002 which, through concerted and conspiring acts, was
5 misrepresented by BMI/PNNL, Mr. Parkinson and Mr. Goodwin as operational
6 and functional. BMI/PNNL and Mr. Goodwin and other unknown BMI/PNNL
7 representatives identified as JOHN DOES I through XX, intentionally prolonged
8 and extended negotiations with PULVER/CATALOGS, for the licensing of
9 PalmFon software, commencing on or about July 2001 through January 2002.
10 The negotiations and intentional prolonging of the negotiations, for the licensing
11 of PalmFon software, was a part of a pattern of activity or a scheme and were
12 accomplished via conferences, telephone calls, wire including internet, telephone
13 and email comprising misrepresentation and wire fraud pursuant to 18 U.S.C.A. §
14 1343. A Licensing Agreement of PalmFon software to PULVER/CATALOGS
15 was executed on behalf of BMI/PNNL by Mr. Schwenk as Contracting Officer.
16 The conspiracy of misrepresentation of PalmFon software as operational and
17 functional, or of rendering inoperable and dysfunctional PalmFon software and
18 the intentional prolonging of negotiations was a scheme having the intent to delay
19 or prevent PULVER/CATALOGS from entering the market with PalmFon
20 software or a product having PalmFon software attributes while allowing
21 BMI/PNNL, Mr. Parkinson and Mr. Goodwin and other unknown JOHN DOES I
22 through XX to advance PalmFon software or a different BMI/PNNL mobile
23 product into the market. BMI/PNNL, Mr. Parkinson and Mr. Goodwin, and
24 unknown JOHN DOES I through XX conspired in creating and knew of the
25 misrepresentations, the disabling, and the scheme and plan to prevent
26 PULVER/CATALOGS from engaging in the market for a product having

1 PalmFon software attributes.

2 PULVER/CATALOGS did not know of the conspiracy of
3 misrepresentation and damage until the summer or fall of 2002. In March 2002
4 PULVER/CATALOGS approached BMI/PNNL and Mr. Dorow seeking
5 assistance in operating and advancing the PalmFon software for use with
6 InterSystems, Inc. at which time BMI/PNNL through Mr. Dorow conducted
7 further operability and functionality examinations of PalmFon software and with
8 Mr. Dorow advising of the inoperability and absence of functionality of PalmFon
9 software in March 2002 at which time BMI/PNNL and Mr. Dorow commenced
10 receiving payment from pre-existing DOE-TAP funds authorized for
11 PULVER/CATALOGS, for the purpose of preparing for a trade show
12 demonstration, scheduled for April 2002, involving PalmFon software. Thereafter
13 BMI/PNNL, Mr. Dorow and other representatives of BMI/PNNL received
14 payments for these efforts from DOE-TAP agreements.

15 These matters were reported to the DOE-OIG in February 2005.

16
17 **THIRD CAUSE OF ACTION - UNFAIR COMPETITION AND UNFAIR**
18 **BUSINESS PRACTICES - PALMFON**

19
20 40. Plaintiffs re-allege paragraphs 1 through 39.

21
22 41. The acts, heretofore alleged, of BMI/PNNL by its representatives, Mr.
23 Parkinson and Mr. Goodwin and unknown JOHN DOES I through XX, comprise
24 unfair methods of competition and or unfair or deceptive acts or practices in the
25 conduct of trade or commerce in violation of RCW 19.86 et seq, causing damages
26 to Plaintiffs in amounts as shall be proven at the time of trial.

1 These matters regarding PalmFon software were reported to the DOE-OIG
2 in February 2005.

3
4 **FOURTH CAUSE OF ACTION -INTERFERENCE WITH BUSINESS**
5 **EXPECTANCY- PALMFON**
6

7 42. Plaintiffs re-allege paragraphs 1 through 41
8

9 43. As alleged in prior paragraphs, upon commencement of the BMI/PNNL
10 and Mr. Parkinson solicitation for the licensing of PalmFon,
11 PULVER/CATALOGS undertook extensive marketing activities, sales channel
12 development and market analysis. PULVER/CATALOGS disclosed to
13 BMI/PNNL representatives Mr. Parkinson, Ms. Vickie Birkenthal, Mr. Goodwin
14 and other unknown JOHN DOES I through XX, the positive response from
15 prospective PalmFon marketing partners and end-users to PULVER/CATALOG'S
16 PalmFon announcements in the Commerce Business Daily in the fall of 2001.

17 BMI/PNNL, Mr. Parkinson, Ms. Vickie Birkenthal, Mr. Goodwin and other
18 unknown JOHN DOES I through XX knew of this positive response to PalmFon
19 and its functionality represented to PULVER/CATALOGS by BMI/PNNL since
20 June 2001 and, by improper means and for improper purposes, intentionally
21 interfered with the functionality and operability of PalmFon and the licensing of
22 PalmFon inducing or causing the loss of the business opportunity with industry
23 prospects including InterSystems Inc. causing PULVER/CATALOGS damages,
24 including punitive damages pursuant to RCW 19.86 et seq and attorney fees, in
25 amounts to be proven at trial.

26 These matters regarding PalmFon software were reported to the DOE-OIG
27

1 in February 2005.

2
3 **FIFTH CAUSE OF ACTION -BREACH OF FIDUCIARY DUTY -**
4 **PALMFON**

5 44. Plaintiffs re-allege paragraphs 1 through 43.

6
7 45. Defendants BMI/PNNL, Mr. Parkinson, Mr. Goodwin and other
8 unknown JOHN DOES I through XX, advertised the functionality and operability
9 of the PalmFon software and solicited Plaintiffs to License and commercialize the
10 PalmFon software; the said Defendants had, at the time of advertising and or
11 solicitation or at least prior to the execution of a Licensing Agreement with
12 Plaintiffs for PalmFon software, a conflict of interest or a self-interest in further
13 development of and in commercializing the PalmFon software in competition with
14 Plaintiffs; the Defendants' had a Fiduciary Duty to Plaintiffs; the said Defendants
15 did not disclose Defendants' conflict of interest or self-interest and engaged in a
16 course of conduct comprising a breach of their Fiduciary Duty to plaintiffs which
17 allowed the interests of the said Defendants to be advanced to the detriment and
18 damage of the Plaintiffs in an amount which shall be proven at the time of trial.

19
20 **SIXTH CAUSE OF ACTION -TRADE SECRET MISAPPROPRIATION -**
21 **MDM**

22 46. Plaintiffs re-allege paragraphs 1 through 45.

23
24 47. PULVER/CATALOGS, in November 2001 acquired the domain name
25 www.mobiledatamanager.com and proposed to develop a product having features
26 in addition to those represented to be found in PalmFon software. The new

1 product was named Mobile Data Manager, hereafter MDM. By March 2002,
2 PULVER/CATALOGS had conceived of and began developing the specification
3 for MDM, a software product designed for handheld PDA users to
4 receive(download) and send(upload) information to and from standard databases.
5 By March 2002, PULVER/CATALOGS had conducted extensive market research
6 demonstrating the marketing potential for MDM. The PULVER/CATALOGS
7 MDM specification and MDM/PalmFon market research comprises valuable
8 Trade Secret information protected by RCW 19.108. et seq, the Economic
9 Espionage Act 18 U.S.C.A. § 1832, (a) and the Cooperative research and
10 development act 15 U.S.C.A. § 3710a(c)(7)(A).

11 PULVER/CATALOGS divulged the MDM specification and
12 MDM/PalmFon market research to BMI/PNNL, Mr. Dorow, Mr. Goodwin and
13 others during the technical assistance provided by BMI/PNNL via its
14 representatives. PULVER/CATALOGS, prior to March 2002, had qualified for
15 and had DOE-TAP funding available to obtain technical assistance from
16 BMI/PNNL. PULVER/CATALOGS approached BMI/PNNL representative Mr.
17 Dorow, discussed with Mr. Dorow the PalmFon software and stated to Mr. Dorow
18 the initial specification of the new MDM product and disclosed the marketing
19 research; Mr. Dorow and BMI/PNNL agreed to provide technical assistance to
20 PULVER/CATALOGS in return for payment from the DOE-TAP funds available
21 to PULVER/CATALOGS. BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Dr.
22 Gary Spanner and other BMI/PNNL employees represented to
23 PULVER/CATALOGS that the BMI/PNNL assistance was being provided for the
24 benefit of PULVER/CATALOGS in accordance with the BMI/PNNL
25 representations of the purposes of the DOE-TAP funds.

26 After numerous consultations with PULVER/CATALOGS in March and
27

1 April 2002, Mr. Dorow developed a prototype MDM version that had
2 functionality sufficient for PULVER/CATALOGS to demonstrate the MDM
3 prototype at an InterSystems Inc. booth at a Salt Lake City trade show.
4 BMI/PNNL and Mr. Dorow invoiced and were paid for these efforts from DOE-
5 TAP funds authorized from one or more sources including the
6 PULVER/CATALOGS preexisting DOE-TAP, DOE-TAP funds authorized by
7 Dr. Gary Spanner on April 8, 2002. Subsequently DOE-TAP funds authorized for
8 MDM development for Mr. Dave Dillman and DOE-TAP funds authorized for
9 others in late 2002.

10 Thereafter, commencing in approximately August 2002,
11 PULVER/CATALOGS concluded that BMI/PNNL, Mr. Dorow, Mr. Goodwin,
12 Mr. Silva, Mr. Farris and others including JOHN DOES I through XX,
13 misappropriated the PULVER/CATALOGS Trade Secrets relative to the MDM
14 Specification and associated marketing information including specific sales
15 opportunities, and, while representing to undertake work on behalf of
16 PULVER/CATALOGS, BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr.
17 Farris and others, were developing in parallel, using the specification and the
18 marketing analysis and information acquired from PULVER/CATALOGS for the
19 purpose of producing a mobile product to be produced for or placed in interstate
20 or foreign commerce and with the intent of achieving an economic benefit for
21 BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva and others to the disadvantage
22 of PULVER/CATALOGS; BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr.
23 Farris and others did these acts of misappropriation intending and knowing that
24 the offense would injure PULVER/CATALOGS.

25 In December 2002 Mr. Dorow demonstrated the operable and functional
26 MDM software to PULVER/CATALOGS. BMI/PNNL, Mr. Dorow, Mr.

1 Goodwin and others refused to deliver operable and functional MDM software to
2 PULVER/CATALOGS advising that BMI/PNNL would place their parallel
3 mobile product into commercialization and requiring PULVER/CATALOGS to
4 pay additional consultation fees for additional advancement of the MDM
5 software. In May 2003 Mr. Dorow again demonstrated a operable and functional
6 MDM software to PULVER/CATALOGS. MDM software source code was
7 delivered to PULVER/CATALOGS on August 29, 2003. The MDM software
8 was inoperable and non-functional with this confirmed by independent computer
9 consultants. Mr. Dorow admitted, in September 2003, that the MDM software
10 delivered to PULVER/CATALOGS was embarrassing, inoperable and non-
11 functional; Mr. Dorow then again offered to demonstrate operational and
12 functional BMI/PNNL mobile software if PULVER/CATALOGS could arrange
13 for demonstrations with customers leading to income for BMI/PNNL.

14 The PULVER/CATALOGS trade secret information was information
15 deriving independent economic value from not being generally known to, not
16 being readily ascertainable by proper means by other persons, including
17 BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris, Ms. Cejka and
18 other who were able to obtain economic value from its disclosure or use. The
19 indicated MDM specification and marketing analysis was disclosed to BMI/PNNL
20 and Mr. Dorow pursuant to the DOE-TAP assistance.

21 BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris and others
22 revealed their plans to own and control MDM with their misappropriation
23 undertaken and revealed, to PULVER/CATALOGS, by wire including telephone,
24 email, internet and facsimile transmission demonstrating a scheme to defraud
25 PULVER/CATALOGS by taking the MDM specification and Marketing Analysis
26 from PULVER/CATALOGS for the personal gain of BMI/PNNL, Mr. Dorow and
27

1 Mr. Goodwin and others with the scheme advanced by use of the wires in
2 furtherance of the scheme and with the specific intent to deceive or defraud
3 PULVER/CATALOGS regarding the development of the MDM product for
4 PULVER/CATALOGS.

5 The misappropriation of the MDM specification and marketing analysis, the
6 delay in the delivery of and the delivery of the MDM software source code in an
7 inoperable and non-functional state was a part of a pattern of activity or a scheme
8 and was accomplished via conferences, telephone calls, wire including internet,
9 telephone and email comprising wire fraud pursuant to 18 U.S.C.A. § 1343.

10 These matters were reported to the DOE-OIG in October, 2003.

11
12 **SEVENTH CAUSE OF ACTION -MISREPRESENTATION - MDM**

13 48. Plaintiffs re-allege paragraphs 1 through 47.

14
15 49. PULVER/CATALOGS re-alleges in particular paragraph 47.

16 PULVER/CATALOGS divulged, in March through August 2002, the
17 MDM specification and MDM/PalmFon market research to BMI/PNNL, Mr.
18 Dorow, Mr. Goodwin and others for the purpose of securing BMI/PNNL
19 assistance. PULVER/CATALOGS approached BMI/PNNL representative Mr.
20 Dorow, discussed with Mr. Dorow the PalmFon software and stated to Mr. Dorow
21 the initial specification of the new MDM product and disclosed the marketing
22 research; Mr. Dorow and BMI/PNNL agreed to provide technical assistance to
23 PULVER/CATALOGS in return for payment from the DOE-TAP funds available
24 to PULVER/CATALOGS. BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva and
25 others mis-represented to PULVER/CATALOGS that the BMI/PNNL assistance
26 was being provided for the benefit of PULVER/CATALOGS in accordance with
27

1 the BMI/PNNL representations of the purposes of the DOE-TAP funds.

2 Mr. Dorow, receiving payment from DOE-TAP funds authorized for
3 PULVER/CATALOGS, developed a prototype MDM version that had
4 functionality sufficient for PULVER/CATALOGS to demonstrate the MDM
5 prototype at an InterSystems Inc. booth at a Salt Lake City trade show in April
6 2002. PULVER/CATALOGS conferred numerous times with Mr. Dorow
7 following the April 2002 trade show relative to evolutions of the MDM
8 specification.

9 The misrepresentations by BMI/PNNL, Mr. Dorow, Mr. Goodwin and
10 others that they were providing Technical Assistance for PULVER/CATALOGS
11 constituted material misrepresentations of existing fact; the falsity of which was
12 known to BMI/PNNL, Mr. Dorow and Mr. Goodwin, were made with the intent to
13 cause PLAINTIFFS to act or refrain from acting with respect to the development
14 of an MDM product by means independent of BMI/PNNL, to not enter the mobile
15 product market and to not be competitive with a BMI/PNNL mobile product with
16 BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Farris, Ms. Cejka, Mr. Schwenk and
17 others knowing of PLAINTIFFS' ignorance of the falsity of the
18 misrepresentations. PLAINTIFFS' relied on and had the right to rely on the truth
19 of the representation with resulting damage to PLAINTIFFS in amounts to be
20 proven at the time of trial. The misrepresentations and acts of delivery of
21 inoperable and non-functional MDM software, for which BMI/PNNL and Mr.
22 Dorow and other employees and representatives of BMI/PNNL were paid by
23 DOE, denied DOE royalties for sales of MDM software and constituted fraud
24 against DOE.

25 Commencing in approximately August 2002, PULVER/CATALOGS
26 concluded that BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris, Ms.

1 Cejka and others including JOHN DOES I through XX, were misappropriating the
2 PULVER/CATALOGS Trade Secrets relative to the MDM, and, while
3 representing to undertake work on behalf of PULVER/CATALOGS, BMI/PNNL,
4 Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris and others, were developing in
5 parallel, using the specification and the marketing analysis and information
6 acquired from PULVER/CATALOGS for the purpose of producing a mobile
7 product to be produced for or placed in interstate or foreign commerce and with
8 the intent of achieving an economic benefit for BMI/PNNL, Mr. Dorow, Mr.
9 Goodwin, Mr. Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and others to the
10 disadvantage of PULVER/CATALOGS; BMI/PNNL, Mr. Dorow, Mr. Goodwin,
11 Mr. Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and others did these acts of
12 misappropriation intending and knowing that the offense would injure
13 PULVER/CATALOGS; such acts were accomplished by the misrepresentations,
14 with the intent that PULVER/CATALOGS justifiably relied upon and did rely
15 upon and with the concerted efforts of BMI/PNNL, Mr. Dorow, Mr. Goodwin,
16 Mr. Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and others to misappropriate said
17 trade secrets. Defendants, by misappropriation, concealment, fraud, artifice or
18 deception obtained such trade secret information through multiple personal
19 conferences, by wire including telephone, internet and email all to the damage of
20 PULVER/CATALOGS. While accomplishing such misappropriation of trade
21 secrets, BMI/CATALOGS were paid from DOE-TAP funds authorized from one
22 or more sources including the DOE-TAP funds authorized by Dr. Gary Spanner
23 on April 8, 2002 and DOE-TAP funds authorized for Mr. Dave Dillman and
24 others.

25 BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, and others revealed their
26 plans to own and control MDM with their misappropriation undertaken and
27

1 revealed by wire including telephone, email, internet and facsimile transmission
2 demonstrating a scheme to defraud PULVER/CATALOGS by taking the MDM
3 specification and Marketing Analysis from PULVER/CATALOGS for the
4 personal gain of BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris,
5 Ms. Cejka, Mr. Schwenk with the scheme advanced by use of the wires in
6 furtherance of the scheme and with the specific intent to deceive or defraud
7 PULVER/CATALOGS regarding the development of the MDM product for
8 PULVER/CATALOGS.

9 The misrepresentation that the MDM specification and marketing analysis
10 was being used for the preparation of an MDM product for
11 PULVER/CATALOGS, the delay in the delivery of and the delivery of the MDM
12 software source code in an inoperable and non-functional state was a part of a
13 pattern of activity or a scheme and was accomplished via conferences, telephone
14 calls, wire including internet, telephone and email comprising wire fraud pursuant
15 to 18 U.S.C.A. § 1343.

16 The acts of BMI/PNNL by and through its representatives including Mr.
17 Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and others
18 comprise false representations made by the defendants to the effect that
19 BMI/PNNL and the defendants were advancing and preparing a MDM software
20 product for PULVER/CATALOGS; defendant's knew or believed that the
21 representations made to PULVER/CATALOGS were false with the
22 representations made with the intention to induce the PULVER/CATALOGS to
23 act or refrain from acting relative to the development of MDM and in advancing
24 marketing of MDM pursuant to the marketing strategy and analysis undertaken by
25 PULVER/CATALOGS, in reliance upon the misrepresentation, while the
26 Defendants advanced the MDM product for their benefit; plaintiffs

1 PULVER/CATALOG justifiably relied on the misrepresentation by BMI/PNNL
2 and other defendants to the effect that they were developing the MDM product for
3 PULVER/CATALOGS causing PULVER/CATALOGS to lose sales and sales
4 opportunities to the damage of the plaintiffs proximately caused by such reliance.

5 There matters were reported to the DOE-OIG in October 2003.

6
7 **EIGHTH CAUSE OF ACTION - CONSPIRACY - MDM**

8 50. Plaintiffs re-allege paragraphs 1 through 49.

9
10 51. PULVER/CATALOGS re-allege in particular paragraphs 47 and 49.
11 Concerted acts and acts of combination to misappropriate trade secrets of
12 PULVER/CATALOGS, to misrepresent the Technical Assistance for the benefit
13 of PULVER/CATALOGS in developing the MDM software, the delay in the
14 delivery of the MDM software and the delivery of MDM software which was
15 inoperable and non-functional was accomplished by BMI/PNNL, Mr. Dorow, Mr.
16 Goodwin, Mr. Silva and others by conferences, telephone calls, wire including
17 internet, telephone and email comprising wire fraud pursuant to 18 U.S.C.A. §
18 1343.

19 The acts of conspiracy of BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr.
20 Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and others were made with the intent
21 to cause PLAINTIFFS to act to develop business and marketing plans, form
22 business relations for the purpose of advancing the MDM software into the market
23 and to cause PULVER/CATALOGS to be delayed into entering the market for
24 products such as MDM software so that BMI/PNNL, Mr. Dorow, Mr. Goodwin,
25 Mr. Silva, Mr. Farris, Ms. Cejka, Mr. Schwenk and other BMI/PNNL
26 representatives could advance a similar product into commercialization for the

benefit of the conspiring parties.

The acts of conspiracy in misappropriation and misrepresentation and of delay in delivery and of delivery of inoperable and non-functional MDM software, the preparation of which BMI/PNNL, Mr. Dorow and others were paid by DOE-TAP funds, acted to defraud DOE and denied DOE royalties or other licensing fees and damaged PULVER/CATALOGS in amounts to be proven at the time of trial. The MDM software was produced by BMI/PNNL and Mr. Dorow others through funding from DOE. The conspiracy to delay or deny PULVER/CATALOGS entry into the market place was additionally a conspiracy to deny DOE royalties or other licensing fees from the licensing of the MDM software.

PULVER/CATALOGS did not know of the conspiracy of misrepresentation and damage until the summer or fall of 2003.

These matters were reported to the DOE-OIG in October 2003.

**NINTH CAUSE OF ACTION - UNFAIR COMPETITION AND UNFAIR
BUSINESS PRACTICES - MDM**

52. Plaintiffs re-allege paragraphs 1 through 51.

53. The acts, heretofore alleged, of BMI/PNNL by its representatives, Mr. Dorow, Mr. Goodwin, Mr. Silva, Mr. Farris, Ms. Cejka and other unknown JOHN DOES I through XX, comprise unfair methods of competition and or and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of RCW 19.86 et seq, causing damages and future damages to Plaintiffs, including punitive damages pursuant to RCW 19.86 et seq and attorney fees, in amounts to

1 be proven at trial.

2 These matters were reported to the DOE-OIG in October 2003.

3
4 **TENTH CAUSE OF ACTION -INTERFERENCE WITH BUSINESS**
5 **EXPECTANCY- MDM**
6

7 54. Plaintiffs re-allege paragraphs 1 through 53
8

9 55. As alleged in prior paragraphs, PULVER/CATALOGS undertook
10 extensive market analysis to project the potential revenue from sales related to
11 MDM software with potential revenue indicated at several million dollars; this
12 market analysis was made available to BMI/PNNL, Mr. Dorow, Mr. Goodwin,
13 Mr. Silva and other representatives of BMI/PNNL; InterSystems Inc., a principal
14 provider of products and services to the healthcare industry and other industries
15 represented a potential client upon successful development and or licensing and
16 operation of a device meeting MDM specifications. PULVER/CATALOGS
17 recognized the existence of a valid contractual relationship or business
18 expectancy. Marketing research and analysis by PULVER/CATALOGS, which
19 was shared with BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva and other
20 employees of BMI/PNNL, demonstrated a market potential for sales and revenues
21 of several million dollars; BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Farris and
22 others knew of these relationships and, by improper means and for improper
23 purposes, intentionally interfered with the functionality and operability of MDM
24 software and the licensing of MDM to Plaintiffs inducing or causing the loss of
25 the business opportunity with industry prospects including but not limited to
26 InterSystems Inc. causing PULVER/CATALOGS damages and future damages,
27

1 including punitive damages pursuant to RCW 19.86 et seq and attorney fees, in
2 amounts to be proven at trial.

3 These matters were reported to the DOE-OIG in October 2003.

4
5 **ELEVENTH CAUSE OF ACTION -BREACH OF FIDUCIARY DUTY -**
6 **MDM**

7 56. Plaintiffs re-allege paragraphs 1 through 55.

8
9 57. Defendants BMI/PNNL, Mr. Dorow, Mr. Goodwin, Mr. Silva and other
10 unknown JOHN DOES I through XX, received from PULVER/CATALOGS the
11 MDM specification and marketing analysis, both constituting trade secret
12 properties, under the guise of providing Technical Assistance pursuant to and with
13 the receipt of DOE-TAP funding and solicited Plaintiffs to disclose additional
14 information re: product specification and marketing analysis under the pretext of
15 advancing product development for PULVER/CATALOGS and for the purpose of
16 PULVER/CATALOGS to commercialize the MDM software; the said Defendants
17 had, at the time of communications with PULVER/CATALOGS re: the MDM
18 specification and marketing analysis or at least prior to the execution of a
19 Licensing Agreement with Plaintiffs for MDM software, a conflict of interest or a
20 self-interest in further development of and in commercializing the MDM software
21 in competition with Plaintiffs; the Defendants' had a Fiduciary Duty to Plaintiffs;
22 the said Defendants did not disclose Defendants' conflict of interest or self-
23 interest and engaged in a course of conduct comprising a breach of their Fiduciary
24 Duty to plaintiffs which allowed the interests of the said Defendants to be
25 advanced to the detriment and damage of the Plaintiffs in an amount which shall
26 be proven at the time of trial.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

58. For compensatory damages in amounts to be proven at the time of trial;

59. Prejudgment interest;

60. Punitive damages in an amount to be proven at the time of trial;

61. Reasonable, actual and statutory attorney's fees, costs and disbursements in an amount to be determined at the time of trial as authorized by statute, contract or some well recognized ground in equity;

62. For such other and further relief which the court shall deem just and equitable.

Dated this 28th day of June, 2005.

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE

s/ FLOYD E. IVEY
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